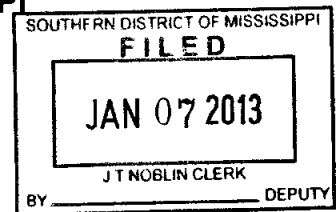


IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION



KIMBERLY ANN SIMMONS, DECEASED,  
by and through DAVID MICHAEL NELSON, JR.,  
as Representative of the ESTATE OF  
KIMBERLY ANN SIMMONS and the  
WRONGFUL DEATH BENEFICIARIES  
OF KIMBERLY ANN SIMMONS

PLAINTIFFS

VS.

NO. 1:13cv1 HSO-RHW

J. NAOMI SANDOR, D.O., NEW BEGINNINGS  
FAMILY MEDICAL PRACTICE, PLLC  
and JOHN DOES 1-5

DEFENDANTS

NOTICE OF REMOVAL

TO: Kristopher W. Carter, Esq.  
DENHAM LAW FIRM, PLLC  
424 Washington Avenue  
P. O. Drawer 580  
Ocean Springs, MS 39566-0580

J. Naomi Sandor, D.O. ("Dr. Sandor"), and New Beginnings Family Medical Practice, PLLC ("New Beginnings") (collectively referred to as "Defendants"), by and through counsel, hereby remove this action to the United States District Court for the Southern District of Mississippi, Southern Division, and show unto the Court the following:

1. Plaintiffs filed an original Complaint in the Second Judicial District of the Circuit Court of Harrison County, Mississippi, on August 22, 2012. Plaintiffs did not serve Defendants with this Complaint. On December 6, 2012, Plaintiffs filed an Amended Complaint alleging wrongful death due to medical negligence and seeking compensatory damages, punitive damages, and "all damages available under

Mississippi law" for the death of Plaintiffs' decedent, Kimberly Ann Simmons. (See Amended Complaint attached hereto as Exhibit 1.)

2. Plaintiffs secured service of process upon Dr. Sandor on December 20, 2012, and upon the registered agent for New Beginnings on December 11, 2012; therefore, pursuant to 28 U.S.C. §§ 1441 & 1446(b), this Notice of Removal is timely filed within thirty (30) days of receipt by Defendants of service of process.

#### **DIVERSITY OF CITIZENSHIP JURISDICTION**

3. Defendants remove this action to federal court pursuant to the Court's diversity of citizenship jurisdiction, 28 U.S.C. § 1332. Pursuant to 28 U.S.C. §§ 1332 & 1441, a case is removable when there is complete diversity between the parties and the amount in controversy exceeds \$75,000.00. In this case, both are satisfied.

4. According to the Amended Complaint, Plaintiffs' decedent, Kimberly Ann Simmons, was at all times material hereto a resident of Harrison County, Mississippi, residing at 4457 Popps Ferry Road, No. 54, D'Iberville, Mississippi. (Exhibit 1, ¶ 1) An Estate proceeding for Kimberly Ann Simmons has been opened in the Chancery Court of Harrison County, Mississippi. (See Petition for Appointment of Administration, Letters of Administration and Determination of Heirs at Law and Wrongful Death Beneficiaries attached hereto as Exhibit 2.) David Michael Nelson, Administrator of the Estate of Kimberly Ann Simmons, is a resident citizen of Mississippi, whose address is 4404 Brodie Road, D'Iberville, Mississippi 39532 (Exhibit 2).

5. Defendant Dr. Sandor is a resident citizen of Ohio whose address is 2122 Bandit Trail, Beavercreek, Ohio 45434.

6. Defendant New Beginnings was previously a Mississippi professional limited liability company of which Dr. Sandor was the only member. For purposes of diversity jurisdiction, a limited liability company is a citizen of each state where its members are citizens. *Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5<sup>th</sup> Cir. 2008); *Johnson v. Value Place Franchises Services, LLC*, 2010 WL1633469 (S.D. Miss.). As the sole member of New Beginnings is an Ohio resident, complete diversity exists between the parties.<sup>1</sup>

7. While denying that Plaintiffs are entitled to any sum or amount from Defendants, the amount in controversy, exclusive of interests in costs, exceeds \$75,000.00. The Amended Complaint clearly demonstrates an intent to recover an amount exceeding this Court's minimal jurisdictional threshold. While the Amended Complaint does not allege a specific monetary judgment amount, this is a claim for wrongful death wherein the decedent is alleged to have endured physical pain and discomfort, mental anguish, permanent disability, lost enjoyment of life, shortened life expectancy and ultimate loss of life. Plaintiffs, the wrongful death beneficiaries of Kimberly Ann Simmons, claim damages for loss of support, maintenance and companionship, as well as medical and funeral expenses. Plaintiffs also allege a claim for punitive damages. This Court can determine that the jurisdictional amount has been met from the face of the Amended Complaint. *See Allen v. R & H Oil & Gas Co.*,

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<sup>1</sup> New Beginnings ceased existence in 2009 when Dr. Sandor ceased the practice of medicine in Mississippi and moved to Ohio. New Beginnings was administratively dissolved by the Mississippi Secretary of State December 5, 2011. (See Mississippi Secretary of State Business Services Information attached hereto as Exhibit 3.)

63 F.3d 1326, 1335 (5<sup>th</sup> Cir. 1995)(citing *De Aguilar v. Boeing Co.*, 11 F.3d 55, 58 (5<sup>th</sup> Cir. 1993); *Rodriguez v. Kivett's, Inc.*, 2006 WL 2645190 (S.D. Miss.).

8. A true and correct copy of all process, pleadings and papers received by the Defendants are attached to this Notice as Exhibit 4.

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon Plaintiffs' counsel of record and will be duly filed with the Clerk of the Second Judicial District of the Circuit Court of Harrison County, Mississippi.

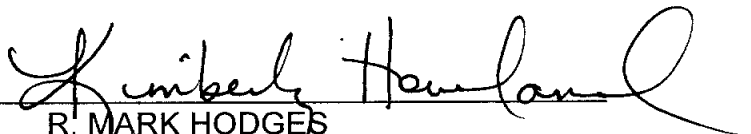
10. Defendants reserve their right to answer the Amended Complaint and to assert any and all applicable defenses to the Amended Complaint, including but not limited to any defenses available under Federal Rules of Civil Procedure 8(c) and 12(b), within the time limitations of Federal Rule of Civil Procedure 81(c)(2)(C).

WHEREFORE, Defendants J. Naomi Sandor, D.O., and New Beginnings Family Medical Practice, PLLC, hereby request this Court to proceed with the handling of this case as if it had been originally filed herein, and that further proceedings in the Second Judicial District of the Circuit Court of Harrison County, Mississippi, be hereby stayed.

This the 4 day of January, 2013.

Respectfully submitted,

J. NAOMI SANDOR, D.O., and  
NEW BEGINNINGS FAMILY  
MEDICAL PRACTICE, PLLC

By:   
R. MARK HODGES  
KIMBERLY N. HOWLAND  
Their Attorneys

**OF COUNSEL:**

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[knh@wisecarter.com](mailto:knh@wisecarter.com)

**CERTIFICATE OF SERVICE**

I, Kimberly N. Howland, hereby certify that I have this day mailed, via United States Mail, postage prepaid, a true and correct copy of the above and foregoing document to the following:

Kristopher W. Carter, Esq.  
DENHAM LAW FIRM, PLLC  
424 Washington Avenue  
P. O. Drawer 580  
Ocean Springs, MS 39566-0580

Gayle Parker, Clerk  
Harrison County Circuit Court  
Second Judicial District  
P. O. Box 235  
Biloxi, MS 39533

This the 4 of January, 2013.

  
KIMBERLY N. HOWLAND